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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation
Against:

13 MIKA K. SHERMAN, R.C.P.
14 2388 Worden Street
San Diego, CA 92107

15 Respiratory Care Practitioner License No. 21980

16 Respondent.
17

Case No. D2 2003 585

**PETITION TO REVOKE
PROBATION**

18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation
21 solely in her official capacity as the Executive Officer of the Respiratory Care Board of
22 California (Board).

23 2. On or about July 31, 2001, the Board issued Respiratory Care Practitioner
24 License Number 21980 to MIKA K. SHERMAN, R.C.P. (Respondent). Respondent's
25 Respiratory Care Practitioner License expired on February 1, 2008.

26 3. In a disciplinary action entitled "In the Matter of the Accusation Against
27 Mika K. Sherman," Case No. R-1916, the Board issued a decision effective August 26, 2005, in
28 which Respondent's Respiratory Care Practitioner License was revoked. However, the

revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A true and correct copy of that decision is attached as Exhibit A and is incorporated by reference.

4. In a disciplinary action entitled “In the Matter of Petition to Revoke Probation Against Mika K. Sherman, R.C.P.,” Case No. R-2015, the Board, issued a decision, effective January 15, 2007, in which Respondent's Respiratory Care Practitioner License was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A true and correct copy of that decision is attached as Exhibit B and is incorporated by reference. References below to conditions of Respondent’s probation refer to the conditions of probation in the Board’s Decision and Order in Case No. R-2015.

JURISDICTION

5. This Petition to Revoke Probation is brought before the Board under the authority of the following laws and the decision of the Board issued in “In the Matter of the Petition to Revoke Probation Against Mika K. Sherman, R.C.P.,” Case No. R-2015 (Exhibit B). All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

7. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

8. Section 118 of the Code states:

“(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

“(c) As used in this section, ‘board’ includes an individual who is authorized by any provision of this code to issue, suspend, revoke a license, and ‘license’ includes ‘certificate,’ ‘registration,’ and ‘permit.’”

COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

10. Section 3753.7 of the Code states:

“For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.”

11. Section 3753.1 of the Code states:

“(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.”

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1 FIRST CAUSE TO REVOKE PROBATION

2 (Biological Fluid Testing)

3 12. Respondent's probation is subject to revocation because she failed comply
4 with the terms of the drug/alcohol testing program, in violation Probation Condition Two of her
5 probation, as described in Paragraphs 13, 14, 15, 16, and 17, below.

6 13. At all times after the effective date of Respondent's probation, as stated in
7 the Disciplinary Order in Case No. R-2015, Condition 2 of Respondent's probation stated:

8 "Respondent, at her expense, shall participate in random testing, including,
9 but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer,
10 hair follicle testing, or a drug screening program approved by the Board. Test
11 costs range from \$21.00 to \$200.00 each. The length of time shall be for the
12 entire probation period. The frequency and location of testing will be determined
13 by the Board.

14 "At all times, Respondent shall fully cooperate with the Board or any of its
15 representatives, and shall, when directed, appear for testing as requested and
16 submit to such tests and samples for the detection of alcohol, narcotics, hypnotics,
17 dangerous drugs or other controlled substances.

18 "If Respondent is unable to provide a specimen in a reasonable amount of
19 time from the request, while at the work site, Respondent understands that any
20 Board representative may request from the supervisor, manager or director on
21 duty to observe Respondent in a manner that does not interrupt or jeopardize
22 patient care in any manner until such time Respondent provides a specimen
23 acceptable to the Board.

24 "Failure to submit to testing or appear as required by any Board
25 representative for testing, as directed shall constitute a violation of probation and
26 shall result in the filing of an accusation and/or a petition to revoke probation
27 against Respondent's respiratory care practitioner license."
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1 14. On or about January 17, 2007, Respondent read and signed a Statement of
2 Understanding explaining the drug/alcohol testing program, and she further initialed each of the
3 34 terms of the program demonstrating she read and understood the terms of the drug/alcohol
4 program.

5 15. Pursuant to Condition Two of Respondent's probation and pursuant to the
6 terms of Respondent's drug/alcohol testing program, Respondent was required to call Compass
7 Vision's random biological fluid testing telephone system on a daily basis to determine if she was
8 selected to provide a specimen for testing and analysis.

9 16. Respondent failed to call Compass Vision's random biological fluid
10 testing telephone system as required on 66 occasions between on or about February 17, 2007 and
11 April 7, 2008.

12 17. Respondent violated Condition Two of her probation by failing to provide
13 a specimen for testing and analysis as scheduled on 8 occasions between March 9, 2007 and
14 March 20, 2008.

15 SECOND CAUSE TO REVOKE PROBATION

16 (Abstention from Mood Altering Substances)

17 18. Respondent's probation is further subject to revocation because she failed
18 to comply with Probation Condition Three, as described in Paragraphs 19 and 20 below.

19 19. At all times after the effective date of Respondent's probation, Condition
20 Three of Respondent's probation stated:

21 "Respondent shall completely abstain from the possession or use of
22 alcohol, controlled substances, dangerous drugs, and any and all other mood
23 altering drugs, substances and their associated paraphernalia, except when the
24 drugs are lawfully prescribed by a licensed practitioner as part of a documented
25 medical treatment.

26 "Respondent shall execute a release authorizing the release of pharmacy
27 and prescribing records as well as physical and mental health medical records.

28 Respondent shall also provide information of treating physicians, counselors or

1 any other treating professionals as requested by the Board.

2 “Respondent shall ensure that she is not in the presence of or in the same
3 physical location as individuals who are using illegal substances, even if
4 Respondent is not personally ingesting the drug(s)

5 “Any positive result that registers over the established laboratory cutoff
6 level shall constitute a violation of probation and shall result in the filing of an
7 accusation and/or a petition to revoke probation against Respondent’s respiratory
8 care practitioner license.

9 “Respondent also understands and agrees that any positive result that
10 registers over the established laboratory cutoff level shall be reported to each of
11 Respondent’s employers.”

12 20. On or about May 29, 2007, Respondent provided a specimen for testing
13 and analysis, which reported a positive result for Ethylglucuronide at a level of 1400 ng,
14 indicating Respondent had consumed alcohol in violation of Condition Three of her probation.

15 THIRD CAUSE TO REVOKE PROBATION

16 (Quarterly Report)

17 21. Respondent’s probation is further subject to revocation because she failed
18 to comply with Probation Condition Six, as described in Paragraphs 22, 23, 24 and 25, below.

19 22. At all times after the effective date of Respondent’s probation, Condition
20 Six of Respondent’s probation stated:

21 “Respondent shall file quarterly reports of compliance under penalty of
22 perjury, on forms to be provided to the probation monitor assigned by the Board.
23 Omission or falsification in any manner of any information on these reports shall
24 constitute a violation of probation and shall result in the filing of an accusation
25 and/or a petition to revoke probation against Respondent’s respiratory care
26 practitioner license.

27 “Quarterly report forms will be provided by the Board. Respondent is
28 responsible for contacting the Board to obtain additional forms if needed.

Quarterly reports are due for each year of probation and the entire length of probation as follows:

“For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

“Failure to submit complete and timely reports shall constitute a violation of probation.”

23. Respondent failed to submit her quarterly report for the reporting period July 1 through September 30th, which was due by October 7, 2007, in violation of Condition Six of her Probation.

24. Respondent further failed to submit her quarterly reports for the periods October 1, 2007 - December 31, 2007, due by January 7, 2008, in violation of Condition Six of her Probation.

25. Respondent further failed to submit her quarterly reports for the periods January 1, 2008 - March 31, 2008, which was due by April 7, 2008, in violation of Condition Six of her Probation.

FOURTH CAUSE TO REVOKE PROBATION

(Probation Monitoring Program)

26. Respondent’s probation is further subject to revocation because she failed to comply with Probation Condition Seven, as described in Paragraphs 27 and 28, below.

27. At all times after the effective date of Respondent’s probation, Condition Seven stated:

“Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or

1 appear to a local venue as directed.

2 “Respondent shall claim all certified mail issued by the Board, respond to
3 all notices of reasonable requests timely, and submit Annual Reports,
4 Identification Update reports or other reports similar in nature, as requested and
5 directed by the Board or its representative.

6 “Respondent is encouraged to contact the Board’s Probation Program at
7 any time she has a question or concern regarding her terms and conditions of
8 probation.

9 “Failure to appear for any scheduled meeting or examination, or cooperate
10 with the requirements of the program, including timely submission of requested
11 information, shall constitute a violation of probation and will result in the filing
12 of an accusation and/or a petition to revoke probation against Respondent’s
13 respiratory care practitioner license.”

14 28. The Board sent certified mail to Respondent on numerous occasions,
15 which included notifications to Respondent of her probation violations. Respondent failed to
16 claim the Board’s certified mail sent to her, including certified mail sent on or about February 5,
17 2007, April 13, 2007, June 19, 2007, September 13, 2007, November 7, 2007, December 12,
18 2007, and February 21, 2008.

19 FIFTH CAUSE TO REVOKE PROBATION

20 (Probation Monitoring Costs)

21 29. Respondent’s probation is further subject to revocation because she has
22 failed to make monthly probation monitoring payments, in violation with Condition Eight of her
23 probation, as described in Paragraphs 30 and 31, below.

24 30. At all times after the effective date of Respondent’s probation,
25 Condition Eight stated:

26 “All costs incurred for probation monitoring during the entire probation
27 shall be paid by the Respondent. The monthly cost may be adjusted as expenses
28 are reduced or increased. Respondent’s failure to comply with all terms and

1 conditions may also cause this amount to be increased.

2 “All payments for costs are to be sent directly to the Respiratory Care
3 Board and must be received by the date(s) specified. (Periods of tolling will not
4 toll the probation monitoring costs incurred.)

5 “If Respondent is unable to submit costs for any month, she shall be
6 required instead to submit an explanation of why she is unable to submit the costs,
7 and the date(s) she will be able to submit the costs including payment amount(s).
8 Supporting documentation and evidence of why the Respondent is unable to make
9 such payment(s) must accompany this submission.

10 “Respondent understands that failure to submit costs timely is a violation
11 of probation and submission of evidence demonstrating financial hardship does
12 not preclude the Board from pursuing further disciplinary action. However,
13 Respondent understands providing evidence supporting documentation of
14 financial hardship may delay further disciplinary action.

15 “In addition to any other disciplinary action taken by the Board, an
16 unrestricted license will not be issued at the end of the probationary period and the
17 respiratory care practitioner license will not be renewed, until such time all
18 probation monitoring costs have been paid.

19 “The filing of bankruptcy by Respondent shall not relieve the Respondent
20 of her responsibility to reimburse the Board for costs incurred.

21 “Respondent shall pay the \$600 remaining balance of her probation
22 monitoring costs in Case No. R-1916. This amount which represents probation
23 monitoring for the months of December 2005 through May 2006, shall be paid
24 directly to the Board, and shall be paid in full within 30 days from the effective
25 date of this decision.”

26 31. Respondent failed to make past probation monitoring costs of \$600
27 which was due within 30 days of the effective date of the order. Respondent further failed to
28 make monthly probation monitoring payments for the months of February 2007 through March

2008 and is currently in arrears \$1,709.

SIXTH CAUSE TO REVOKE PROBATION

(Notice of Change of Employment or Residence)

32. Respondent's probation is further subject to revocation because she failed to (1) Notify the Board of changes to her employment, location, and address, and/or (2) Notify her probation monitor and the Board of changes to her residence and/or mailing address, in violation of Condition Eleven of her probation, as described in Paragraphs 33, 34, 35 and 36, below.

33. At all times after the effective date of Respondent's probation, Condition Eleven stated:

"Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators, or directors.

"Respondent shall also notify her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide her physical address as well."

34. On February 1, 2008, the Board was informed by the Director of Cardiopulmonary at El Dorado Care Center that Respondent submitted her resignation letter with an effective date of February 1, 2008. The Director also provided the Board Respondent's last Time and Attendance – Employee Timecard Report from El Dorado Care Center.

35. Respondent has not notified the Board of her resignation from El Dorado Medical Center. In addition, the Board has been unable to reach Respondent by either telephone or mail.

36. The Board has been unable to reach Respondent by mail or by phone, and accordingly believes she has changed her residence and/or mailing address, and Respondent has

1 not notified the Board or her probation officer of a change to her residence and/or mailing
2 address.

3 SEVENTH CAUSE TO REVOKE PROBATION

4 (Failure to Pay Cost Recovery)

5 37. Respondent's probation is further subject to revocation because she has
6 failed to pay to the Board for the costs of the investigation and prosecution of her prior
7 disciplinary actions, in violation of Condition Twelve of her probation, as described in
8 paragraphs 38 and 39, below.

9 38. At all times after the effective date of Respondent's probation,
10 Condition Eight stated:

11 "Respondent shall pay to the Board a sum not to exceed the costs of the
12 investigation and prosecution of this case. That sum shall be \$706 for the current
13 costs recovery and \$384.50 for the costs recovery owed in Case No. R-1916
14 (previous case) and shall be paid in full directly to the Board, in equal quarterly
15 payments, within 12 months from the effective date of this decision. Cost
16 recovery will not be tolled.

17 "If Respondent is unable to submit costs timely, she shall be required
18 instead to submit an explanation of why she is unable to submit these costs in part
19 or in entirety, and the date(s) she will be able to submit the costs including
20 payments amount(s). Supporting documentation and evidence of why the
21 Respondent is unable to make such payment(s) must accompany this submission.

22 "Respondent understands that failure to submit costs timely is a violation
23 of probation, and submission of evidence demonstrating financial hardship does
24 not preclude the Board from pursuing further disciplinary action. However,
25 Respondent understands that providing evidence and supporting documentation of
26 financial hardship may delay further disciplinary action.

27 "Consideration to financial hardship will not be given should Respondent
28 violate this term and condition, unless an unexpected AND unavoidable hardship

1 is established from the date of this order to the date payment(s) is due.

2 “The filing of bankruptcy by the Respondent shall not relieve the
3 Respondent of her responsibility to reimburse the Board for these costs.”

4 39. Respondent has failed to make all quarterly payments as required by
5 Condition Twelve of her probation, for which she is currently in arrears in the amount of \$71.

6 DISCIPLINE CONSIDERATIONS

7 40. To determine the degree of discipline, if any, to be imposed on
8 Respondent, Complainant alleges that the Board has previously disciplined Respondent for
9 violating her terms and conditions of probation in a Decision made effective on January 15, 2007
10 in a prior disciplinary action entitled “In the Matter of the Petition to Revoke Probation Against
11 Mika K. Sherman, R.C.P.,” Case No. R-2015. (See, Exhibit B).

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of
5 California in Case No. R-2015 and imposing the disciplinary order that was stayed thereby
6 revoking Respiratory Care Practitioner License No. 21980 issued to Mika K. Sherman, R.C.P.;

7 2. Revoking or suspending Respiratory Care Practitioner License No. 21980,
8 issued to Mika K. Sherman, R.C.P.;

9 3. Ordering Mika K. Sherman, R.C.P., to pay the Board the costs of the
10 investigation and enforcement of this case, and if probation is continued or extended, the costs of
11 probation monitoring;

12 4. Ordering Mika K. Sherman, R.C.P., to pay the Board for the past
13 probation monitoring costs (\$600), delinquent probation monitoring costs (\$1,709) and
14 delinquent cost recovery payments (\$71) that Respondent owes to the Board, totaling, at the time
15 of the filing of this petition, \$2,380;

16 5. Taking such other and further action as deemed necessary and proper.
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18 DATED: April 9, 2008
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20 Original signed by Liane Zimmerman for:
21 STEPHANIE NUNEZ
22 Executive Officer
23 Respiratory Care Board of California
24 State of California
25 Complainant
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